RULES GOVERNING PRACTICE AND PROCEDURE BEFORE THE MERIT EMPLOYEE RELATIONS BOARD OF THE STATE OF DELAWARE

EFFECTIVE JANUARY 1, 2004

RULE NO. 1: APPLICABILITY, CONSTRUCTION, SPECIFIC ORDERS, WAIVER

- (A) These rules govern practice and procedure in all matters before the Merit Employee Relations Board (hereinafter "Board") and shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Board's statutory responsibilities.
- (B) The Board may for good cause, either upon application or upon its own motion, waive any of these rules of practice and procedure.

RULE NO. 2: ADDRESS OF THE BOARD; OFFICE HOURS

- (A) All communications to the Board or the Board's staff shall be addressed to "The Merit Employee Relations Board" at the Margaret M. O'Neill Building, Suite 213, 410 Federal Street, Dover, Delaware 19901, or such other address as the Board may adopt from time to time.
- (B) The normal office hours of the Board will be from 8:00 a.m. until 4:30 p.m. each weekday, excepting Saturdays, Sundays, legal holidays, or unless otherwise provided by statute or Executive Order.

RULE NO. 3: DEFINITIONS

- (A) All terms defined in the Merit Rules of the State of Delaware applicable to all positions and employees in the classified service shall have the meaning as set forth in said Merit Rules.
- (B) "Board" The Merit Employee Relations Board.
- (C) "Board Staff" All persons employed by the Board or assigned to the Board by another Agency of the State of Delaware.
- (D) "Presiding Officer" The Chair or the next senior Board member in appointment to the Board or a duly designated Hearing Examiner presiding at any Board proceeding.
- (E) "Proceeding" Any undertaking by the Board, upon its own motion, or otherwise, formal or informal, whereby the Board seeks to exercise its statutory authority.

- (F) "Shall" is mandatory.
- (G) "Should" and "may" are permissive.

RULE NO. 4: THE SECRETARY; AUTHENTICATIONS; FILINGS WITH THE BOARD

- (A) The Secretary to the Board shall be the Administrative Assistant employed by the Board or such other individual as the Board designates from time to time by written order or otherwise. The Secretary shall be responsible for the maintenance and custody of the Board's dockets, files, opinions, orders, rules, forms, and other material filed with the Board.
- (B) All papers required to be filed with the Board shall be filed with the Secretary at the Board office within such time limits, if any, as may be fixed by law, rule, or order of the Board. The Secretary shall not file any paper until the fee, if any, required by law or rule shall have been paid.
- (C) The Secretary shall mark or cause to be marked on each communication addressed to the Board and on each pleading, brief, or other document filed with the Board, the time and date of receipt by the Board.
- (D) Subsequent to the docketing of any matter by the Board, all papers of whatever character offered for filing in the docket by any party, shall show the title and style of the proceeding, the docket number, and the name of the person submitting the paper. The Secretary may, in his or her discretion, reject any paper not so identified.
- (E) The Board's date and time stamp shall not be affixed to any document which, in the exclusive and final determination of the Secretary or his or her designee, is not sufficiently legible as received.
- (F) All papers filed with the Board shall be approximately 8 ½ inches by 11 inches in size and should be typewritten upon opaque, unglazed white paper. Legibly printed or hand-written papers may be accepted.
- (G) Filing with the Board by electronic media such as telephonic facsimile transmission or electronic file transfer may be made subject to Rule (E) above.

RULE NO. 5: SERVICE OF DOCUMENTS; PROOF OF SERVICE

(A) Each person filing an appeal, grievance, pleading, or other document with the Board in any proceeding shall, not later than the time of filing, serve a copy of such document on each party, or other person required to be served by rule, order,

or law. An employee shall in all events serve his or her Agency with a copy of any filing with the Board and the Agency shall serve any employee or his or her counsel.

(B) Each party shall accompany any pleading or document filed with the Board with proof of service in accordance with this rule.

RULE NO. 6: PUBLIC ACCESS TO BOARD RECORDS

- (A) The Secretary shall make available for public inspection and copying during regular business hours of the Board all public records of the Board as defined in 29 *Del. C.* §10002(d). Documents pertaining to non-public disciplinary proceedings shall not be made available for public inspection except pursuant to an order of the Board pursuant to 29 *Del. C.* §5948.
- (B) In the event a public record is in active use or in storage and, therefore, unavailable at the time access is requested, the Secretary shall so inform the person seeking access and make an appointment for the person to examine such record as expediently as it may reasonably be made available.
- (C) For copying a public record, the Secretary shall charge a fee in accordance with the charges made by other State Agencies as established by the Secretary of the Department of Administrative Services.

RULE NO. 7: EX PARTE COMMUNICATIONS

No member or employee of the Board who will participate in any way in the rendering of a decision on a matter pending before the Board shall, directly or indirectly, discuss or communicate, concerning such matter with any party, except upon notice to and opportunity for all parties to participate. This rule does not apply to communications required for the disposition of *ex parte* matters authorized by law, or to communications, not otherwise prohibited, by and among the members of the Board, Board staff, and Board legal counsel.

RULE NO. 8: TIME

(A) In computing any period of time prescribed or allowed by any rule, order, or notice of the Board, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it falls on a Saturday, Sunday, or a day made a legal holiday by the laws of this State or of the United States, in which event, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed is less than ten (10) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(B) For good cause shown the Board or the Presiding Officer may extend any period of time prescribed or allowed by any Board rule, order, or notice.

RULE NO. 9: APPEARANCES

- (A) Subject to the Rules of the Delaware Supreme Court, a person may appear before the Board in person or by an attorney or, where permitted by the Court, other lawfully designated representative. If a person is represented by more than one individual, that person must designate a single individual to receive service. With approval of the Presiding Officer or Hearing Examiner, additional persons may be added to the service list in a proceeding before the Board.
- (B) The Board may deny, either temporarily or permanently, the privilege of appearing before it to any attorney or other authorized representative who has engaged in illegal, unethical, or improper behavior with respect to a matter before the Board.

RULE NO. 10: FILING APPEALS

- (A) All appeals filed with the Board, whether direct appeals or appeals after one (1) or more of the Steps in the grievance process under the Merit Rules, shall be in writing, shall be signed by the appellant or his or her attorney, and shall include at least the following:
 - 1. A specific identification of the act or omission complained of and the date or dates of occurrence or non-occurrence;
 - 2. The identification of the Merit Rule or Rules alleged to have been violated;
 - 3. A summary of the argument and legal authorities to be presented;
 - 4. Full name, mailing address, and telephone number of the appellant and his or her attorney or lawful representative, if any;
 - 5. The full identification of the appointing authority or other entity whose action or inaction is the subject of the appeal;
 - 6. If applicable, a copy of the written decision(s) from the last step of the grievance process.
- (B) Each appeal shall have a section wherein the appellant sets forth a brief summary of the evidence he or she expects to present at hearing, showing that the appeal is timely filed with the Board pursuant to the applicable statutes or Merit Rules, and is otherwise within the jurisdiction of the Board.

RULE NO. 11: SCHEDULING OF MATTERS BEFORE THE BOARD

- (A) Matters involving termination of employment, suspension for more than three (3) days, or demotion will normally be allotted one (1) full day for hearing. All other matters will normally be allotted one-half (½) day or less for hearing before the Board. Exceptions to these limitations may be granted by the Board, but only for good cause shown. If any party believes that the presentation of his or her case cannot reasonably be accomplished in one-half (½) of the allotted time or less, then he or she should so notify the Secretary to the Board in writing as soon as possible with a request for additional time setting forth the reasons for such request.
- (B) All parties are expected to use stipulations and agreements to establish facts about which there is no reasonable dispute in order to meet the Board's scheduling requirements.

RULE NO. 12: MOTIONS

- (A) A party in any Board proceeding may file and serve a motion at any time unless otherwise provided. A written motion shall contain a concise statement of the facts and law which support it and a specific request for relief. Any case dispositive motion, such as a motion to dismiss, should be filed and served as soon as possible prior to the start of the hearing. A written reply to a case dispositive motion may be filed. No motion may be filed with the Board without proof that a copy of the motion has been served on the non-moving party(ies).
- (B) The Board or Presiding Officer may, in his or her discretion, permit oral motions and oral or written responses to be made during a hearing.

RULE NO. 13: PRE-HEARING PROCEDURE

- (A) <u>Conferences</u>. The Board President or Presiding Officer may, at any time prior to the hearing, direct the parties to appear for a conference or to participate in a teleconference to consider:
 - (1) Scheduling and the simplification of the issue(s)
 - (2) The necessity or desirability of amendments to the papers filed or for additional papers to be filed, or for the voluntary exchange of information which will facilitate the prompt and just resolution of the issues;
 - (3) The possibility of obtaining stipulations as to the admissibility of facts and documents which will avoid unnecessary proof;

- (4) The limitation of the number of witnesses and such other matters as may aid in the disposition or expedition of the matter;
- (5) The Board President or Presiding Officer may issue such written Orders as may be necessary to address matters arising at the pre-hearing conference.

(B) Required Document Submission.

- (1) Not less than five (5) days prior to the scheduled hearing date, all parties must submit a type written or <u>legible</u> handwritten summary of the expected testimony of each individual which that party will call as a witness. Such written summary should not exceed two (2) 8 ½ by 11 inch pages for each witness and shall set forth a summary of the facts and opinions to which the witness is expected to testify.
- (2) No witness will be permitted to testify unless the written summary of expected testimony has been timely filed or unless such requirement is waived by the Board or Presiding Officer for good cause shown.

RULE NO. 14: PROCEDURES DURING HEARINGS

- (A) A verbatim record of the proceedings before the Board or Presiding Officer will be made either electronically or stenographically. The Presiding Officer will open the hearing by naming the parties, stating the nature of the appeal and the relief sought. Three (3) members of the Board will constitute a quorum for all proceedings before the Board, and the vote of a majority of the quorum will control.
- (B) All testimony before the Board shall be taken under oath or affirmation. Any probative evidence will be admitted, except that evidence which is irrelevant, immaterial, or unduly repetitive may be excluded. Technical rules of evidence shall not apply.
- (C) In appeals involving disciplinary action, the moving party shall be the appointing authority. In all other appeals the moving party shall be the appellant. The designation of the moving party shall not change the ultimate burden of proof on any issue or matter.

- (D) The moving party will be afforded the opportunity to open the hearing with a brief opening statement. Following such statement or the waiver thereof, the opposing party will be permitted the opportunity for a brief opening statement. Thereafter, the moving party shall present evidence in support of its position. Following the opportunity for reasonable cross-examination and questions, if any, by the Board or Presiding Officer, the opposing party will be afforded the opportunity to present evidence which will be subject to cross-examination by the moving party and questions by the Board or Presiding Officer. Further evidentiary presentations may be permitted in the discretion of the Board or Presiding Officer with the party having the burden of proof normally being afforded the final opportunity to present evidence and argument to the Board or the Presiding Officer.
- (E) Any party intending to offer written material as exhibits must ensure that there are sufficient copies available for the Board's files (two (2) copies), for each Board member (five (5) copies), and for opposing counsel. The parties are encouraged to agree upon and, where feasible, pre-mark all exhibits and submit the agreed upon materials to the Board as soon as possible before the hearing.
- (F) Post hearing submission of briefs or memoranda will be as directed by the Board or Presiding Officer.

RULE NO. 15: POST-HEARING PROCEDURES

- (A) Briefs, memoranda, or proposed findings may be filed on behalf of all interested parties only with permission from the Board or Presiding Officer, and shall be filed as directed by the Board or Presiding Officer.
- (B) All such filings should be either typewritten or printed and should include a title page showing the name of the Board, the docket number and title of the proceeding, the name of the parties, the date, and the subject of the filing. All briefs should contain a subject index and a table of citations, both with page references, and shall not exceed twenty-five (25) pages in length without prior permission of the Board or Presiding Officer. Briefs must be signed by the party filing them or his or her attorney.
- (C) Oral argument at the close of the hearing may be allowed or requested by the Board in appropriate cases. No new evidence will be received during such argument.